

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMPLAINT AND REQUEST FOR)	
DISPUTE RESOLUTION)	
OF ESSEX TELCOM, INC.)	DOCKET NO. 01-0427
AGAINST GALLATIN RIVER)	
COMMUNICATION, L.L.C.)	

**GALLATIN RIVER COMMUNICATIONS LLC'S
MOTION TO STRIKE TESTIMONY
AND REQUEST FOR AN EMERGENCY STATUS CONFERENCE**

Gallatin River Communications LLC ("Gallatin") hereby moves to strike portions of the Prefiled Rebuttal Testimony of Fred Goldstein submitted on behalf of Essex Telecom, Inc. ("Essex Telecom"), since large portions of the testimony are outside of the scope of the Prefiled Testimony of Michael Skrivan filed on behalf of Gallatin. In the alternative, Gallatin seeks leave to file surrebuttal testimony and a continuance in the hearing schedule to allow it to do so. Gallatin also seeks on an emergency basis a telephone status conference to set the response and decision date on this Motion given the short time until the current hearing dates of September 18 and 19, 2001.

Motion to Strike Testimony

1. On June 26, 2001, the parties agreed to, and the Administrative Law Judge set, a testimony schedule in the captioned docket, under which the parties would simultaneously file their direct testimony on August 15, 2001 and would simultaneously file their rebuttal testimony on September 6, 2001.

2. August 15, 2001, Gallatin submitted the Prefiled Direct Testimony of Michael T. Skrivan ("Skrivan Direct"). Essex Telcom submitted the Prefiled Testimony of Marc Wolens. No other testimony was filed at that time by either party.

3. During the week of August 20, Essex Telcom requested the deposition of Mr. Skrivan. In response to that request, Gallatin made Mr. Skrivan available for deposition on August 31, 2001.

4. On September 6, 2001, Gallatin submitted the Prefiled Rebuttal of Testimony of Michael T. Skrivan ("Skrivan Rebuttal"). Essex Telcom submitted the Prefiled Rebuttal Testimony of Fred Goldstein ("Goldstein Rebuttal").

5. Large parts of the Goldstein Rebuttal are unrelated to any issue discussed in the Skrivan Direct and therefore cannot reasonably be characterized as anything other than additional direct testimony. As such, it should be stricken as untimely under the schedule Essex Telcom agreed to.

6. For example, the Goldstein Rebuttal raises extensive arguments about FX service, although the Skrivan Direct never mentions FX service. Specifically, page 3, line 15 through page 5, line 2 of the Goldstein Rebuttal purport to analyze the comparison of virtual NXXs to FX service. Page 5, line 3 through page 6, line 8 discusses host/remote switch relationships with FX even though the Skrivan Direct never discusses host or remote switches. At Page 7, lines 11 through 13, the Goldstein Rebuttal again argues about the comparison of virtual NXXs to FX, even though the Skrivan Direct never draws such a comparison.

7. Other parts of the Goldstein Rebuttal address issues raised not by Gallatin, but by Essex Telcom in its deposition of Mr. Skrivan. While Essex Telcom may attempt to adduce that evidence as part of its cross examination of Mr. Skrivan, *i.e.*, as its own rebuttal, Essex Telcom is not entitled to present as rebuttal new evidence directed to testimony Gallatin did not present through the Skrivan Direct. In effect, by relying on its

own cross examination of Mr. Skrivan, Essex Telcom is attempting present rebuttal to its own rebuttal. Those instance include page 7, line 19 through page 8, line 21 of the Goldstein Rebuttal that purports to rebut a statement Mr. Skrivan made in his deposition regarding his definition of toll.

8. Similarly, other parts of the Goldstein Rebuttal are simply unrelated to anything in the Skrivan Direct, do not rebut anything in the Skrivan Direct or are entirely new "direct" testimony. For example, at page 8, line 24 through page 10, line 23, the Goldstein Rebuttal provides a long narrative answer that purportedly responds to the statement in the Skrivan Direct that ISP customers prefer flat-rate calling. But nothing in the entire answers refutes or even attempts to refute the Skrivan Direct statement. The several internal cites are only to Skrivan's deposition testimony. Page 12, line 28 through page 14, line 14 of the Goldstein Rebuttal is a question and answer purportedly keyed to an assertion by Skrivan that "Gallatin is Losing Money on Transport and Access Cost." However, it cites no such assertion in the Skrivan Direct and all but one of the internal cites are to Skrivan's deposition. As to that one cite to the Skrivan Direct, the Goldstein Rebuttal does not attempt to rebut it -- that ISPs need to provide flat-rated access to their customers. Similarly, page 14, lines 15-27 and page 15, line 9 through page 16, line 9 assert an economic motive to Gallatin's actions that are completely unrelated to anything stated in the Skrivan Direct. These statements clearly constitute additional direct testimony by Essex Telcom and are therefore untimely.

9. Each part of the Goldstein Rebuttal cited above (and listed in Attachment A to this Motion) constitutes improper rebuttal because each is outside of the scope of Gallatin's direct case. Therefore, Gallatin respectfully requests that the Administrative

Law Judge strike each of the excerpts cited above. Alternatively, if the Judge determines not to strike the excerpts cited above, Gallatin respectfully requests leave to file responsive surrebuttal testimony to the Goldstein Rebuttal and an extension of the schedule to allow Gallatin three weeks from the Judge's decision to file such surrebuttal testimony.

Request for Emergency Telephone Status Conference

10. Given that the hearings in this matter are currently set for September 18 and 19, 2001 and given the impact the decision on this Motion may have on hearing preparation, Gallatin respectfully requests that the Administrative Law Judge set a telephone status conference at his earliest convenience to argue this motion or set an appropriate response and reply date.

Wherefore, Gallatin River Communications LLC moves for an order either striking the excerpts of the Goldstein Rebuttal cited above or, in the alternative, granting Gallatin three weeks to file surrebuttal testimony and resetting hearings accordingly, and Gallatin requests a telephone status conference to discuss this Motion.

Dated this 11th day of September, 2001

**GALLATIN RIVER
COMMUNICATIONS LLC**

By: _____

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**ATTACHMENT A TO
GALLATIN RIVER COMMUNICATIONS LLC'S
MOTION TO STRIKE TESTIMONY**

Goldstein Rebuttal Testimony To Strike

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CERTIFICATE OF SERVICE
Docket No. 01-0427

I hereby certify that a true and correct copy of the Gallatin River Communications LLC's Motion to Strike Testimony and Request for an Emergency Status Conference has been served on the following by electronic mail and by first class U.S. Mail, postage prepaid, this 10th day of September, 2001.

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